

Application No. 10/828,972

REMARKS/ARGUMENTS

Claims 1-10 are pending in this application. Claim 10 has been withdrawn from consideration. Claims 1-9 have been rejected under 35 U.S.C. 102 on the basis of S.W. Briggs, Patent No. 6,041,776 "Medical Nebulization Device." Applicants' attorney wishes to thank the Examiner for the detailed response to Applicants' prior amendment, and the claims have been amended to particularly point out and set forth the position of the discharge of the supplemental gas into the device so that the injection of the supplemental gas does not effect the rate at which the nebulized liquefied medication is applied to the user.

As shown in the drawing and described in paragraphs 10 and 11 of the specification, the supplemental gas is introduced through an auxiliary inlet port such that the discharge of the supplemental gas is not communicated into the nebulizing chamber. In this manner, the supplemental gas introduced through the inlet port will not effect the rate at which the aerosolized medicant is delivered to the patient. Accordingly, Claim 1 has been modified to particularly point out that the discharge of the auxiliary gas from the auxiliary gas inlet port is at a position such that the supplemental gas is not discharged into the nebulizing chamber. It is respectfully submitted that the particular location of the discharge relative to other structural elements of the nebulizer is not important. It is the positioning of the supplemental gas discharge so that it does not enter the nebulizing chamber, which achieves the inventors' objective in preventing the discharge of supplemental gas from affecting the rate at which the aerosolized medicant is delivered to a patient.

In the Briggs '776 patent, Fig. 1 and Fig. 2 clearly illustrate that the supplemental gas is delivered into the nebulizer chamber, which creates the very problem Applicants' invention solves. In Fig. 1 Briggs clearly discloses that the supplemental gas is delivered into nebulization chamber 26, and the specification clearly describes the same (column 3, lines 42-45). With respect to Fig. 2, it is clearly shown that the auxiliary or supplemental gas is delivered into the nebulizing chamber 26a where nebulization occurs. It is the discharge of supplemental gas in this manner, which creates the problem that the instant invention has solved.

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Every effort has been made by Applicants to define structure which defines the discharge of the supplemental gas into the nebulizer at a position removed from the nebulization chamber. In this manner such supplemental gas does not affect the rate at which the aerosol medicant is delivered to the patient. The particular locale where such supplemental gas is discharged into the nebulizer is unimportant other than that such discharge not occur within the nebulization chamber. This is what Claim 1 is believed to define.

If the Examiner is of the opinion that the prosecution of this application may be expedited by direct contact with Applicants' attorney, the Examiner is requested to contact Applicants' Attorney at the number listed below. In the event the Examiner does not believe this amendment places the application in condition for allowance, it is respectfully requested that the amendment be entered to clarify of the issues on appeal.

In the event this response is not timely filed, Applicants hereby petition for the appropriate extension of time and request that the fee for the extension, along with any other fees which may be due with respect to this paper, be charged to our Deposit Account No. 12-2355.

Respectfully submitted,

LUEDEKA, NEELY & GRAHAM, P.C.

By 

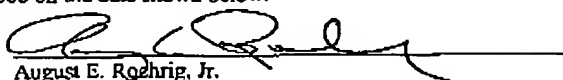
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this Amendment After Final Action (consisting of 6 pages) is being facsimile transmitted to the Patent and Trademark Office at Fax No. 571-273-8300 on the date shown below.

on 12/16/05
Date


August E. Roehrig, Jr.